

STATE HOUSING APPEALS BOARD

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Minutes of the October 12, 2004 Board Meeting

The October 12, 2004 meeting of the State Housing Appeals Board (“SHAB” or “Board”) was called to order at 2:15 PM in Room 313 at State House, Providence, Rhode Island by Judge Stephen Erickson, Chair. Board members in attendance were Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito (designee for Richard Godfrey), John O’Brien, Steve Ostiguy, and Dr. Isadore Ramos. Board members Frank Giorgio III and Thomas Hodge were not present. Also present were William Dolan, Esq., legal counsel to the Board, and Judy Jones and Christine DeRocha, administrative staff to the Board. With seven members present, Judge Erickson declared a quorum.

Mr. Goodrich moved and Mr. Ostiguy seconded the motion to approve the minutes of the September 14, 2004 Board meeting. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, John O’Brien, Steve

Ostiguy, and Dr. Isadore Ramos voting in the affirmative.

Decision Issued for Appeal No. 2003-08 JCM, LLC vs. the Town of Cumberland

Mr. Ostiguy moved and Dr. Ramos seconded the motion to adopt and promulgate the decision of the Board in Appeal No. 2003-08. The vote was unanimous with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.

Appeal No. 2004-19 East Bay Community Development Corporation vs. the Town of Barrington Zoning Board of Review

Legal counsel for the parties were Anthony DeSisto, Esq., for the East Bay Community Development Corporation ("East Bay CDC") and Dennis Greico, Esq., for the Barrington Zoning Board of Review. S. Paul Ryan, Esq., Assistant Solicitor for the Town of Barrington, also was present and available to answer any questions.

SHAB heard oral arguments on the appeal of East Bay CDC challenging the decision of the Town of Barrington Zoning Board of Review dated June 14, 2004, which denied East Bay CDC's Application for a Comprehensive Permit pursuant to R.I.G.L. 45-53-1 et seq. ("Application"). The full transcript of the oral arguments is maintained by SHAB and is a public record available upon request.

The Board recessed from 3:45 to 3:55 PM. When the hearing

resumed, Mr. DeSisto responded to the Town's arguments.

After the completion of oral arguments, questioning of legal counsel by Board members, and discussion by Board members and SHAB legal counsel, Judge Erickson observed that the SHAB must determine whether or not there was evidence to support the findings of fact and the conclusions based upon those findings. He also said that it was his opinion that there is a disparity between the transcript of the local proceedings and the findings of fact that exist in the decision.

Judge Erickson then analyzed some of the disparities:

- Finding #1, that the application does not conform to the comprehensive plan, is a conclusion, not a finding.**
- Finding #5, that the application does not conform with the comprehensive plan because the plan calls for business or elderly housing use for the site, is not supported by any evidence to show that only elderly housing is appropriate for the site.**
- Finding #6, that safety was not adequately addressed, is not supported by any evidence. There is no evidence to support the finding with respect to the traffic study's lack of credibility, and there was not uniformity in the application of fire code approval for this project as compared with other projects.**
- Finding #7, that the applicant never demonstrated that the project would be infeasible if any of its proposed waivers was not granted, relates strictly to the municipal tax rate. The subtext of the finding**

actually supports a finding that the project would be infeasible without the relief.

- Finding #9, that the applicant failed to show the project would meet local needs because it did not comply with the comprehensive plan for elderly housing or business development, does not explain why this site is appropriate for only one type of housing. Finding it appropriate for elderly housing contradicts the argument that the site was needed for business. The need for granite curbing for safety and snowplowing is not supported by the record since granite curbing is required in some places and not required in other places. Density determinations can be ambiguous when certain types of property are allowed density calculations at the discretion of the local board.

- Finding #10, that sidewalks are not needed, does not seem to have a point.

- Finding #11, that even though the project is too dense for this site, it would be suitable for affordable housing, seems to contradict just about everything presented before.

Mr. Goodrich moved and Mr. Ostiguy seconded the motion to vacate the decision of the Barrington Zoning Board and remand the Application back to the Zoning Board for the issuance of a comprehensive permit subject to approval of all the required local, state, and federal permits.

Mr. O'Brien moved and Mr. Maynard seconded the motion to incorporate the analysis by Judge Erickson with regard to the

specific findings of fact and lack of evidence in the Zoning Board's record to support the SHAB's findings. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.

The SHAB made the following findings of fact, all of which were approved unanimously with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative:

(1) Mr. Goodrich moved and Mr. Ostiguy seconded the motion to find that the proposal is not inconsistent with the comprehensive plan because it is in conformity with the comprehensive plan's general dictates with respect to the nature and type of development called for in the plan.

(2) Mr. Ostiguy moved and Mr. Goodrich seconded the motion to find that the Town currently does not meet the ten-percent standard nor does it have a plan to meet the ten-percent standard.

(3) Mr. Ostiguy moved and Mr. Goodrich seconded the motion to find that the applicant had adequately addressed health, safety, and environmental issues in its application; that there is no competent evidence of record to indicate that the opinion advanced by the traffic expert was not credible; that, in regard to fire code compliance, other proposals that were not affordable housing have been approved subject to approval from the fire marshal and the typical time for

judging compliance with the fire code is when a building permit is issued, not at the comprehensive permit stage.

(4) Mr. Milito moved and Mr. Goodrich seconded the motion to find that the Zoning Board's decision was not consistent with local needs and that there was no weighing of the state's need for low and moderate income housing against some of the other concerns that were raised in opposition to the proposal. At the suggestion of Mr. Dolan, the finding was amended to include a finding that the comprehensive plan is a local zoning or land use regulation within the meaning of the Low and Moderate Income Housing Act.

The motion to vacate the decision of the Barrington Zoning Board and remand the Application back to the Zoning Board for the issuance of a comprehensive permit subject to approval of all the required local, state, and federal permits was passed unanimously with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.

Other Business

The Board will meet on October 25 to complete the last two appeals before it and on November 8, 15, and 22 to do substantial completeness reviews. On December 1, the Board will begin ruling on the substantial completeness of seventeen comprehensive permit applications that have been appealed to the Board.

Mr. Goodrich moved and Mr. Maynard seconded the motion to adjourn the meeting at 4:57 PM. The motion was approved unanimously.

Respectfully submitted.

Stephen P. Erickson, Chair